

IDAHO STATE TAX COMMISSION

COMMISSIONERS' OPEN MEETING MINUTES OF MEETING JULY 9, 2014

In attendance: Commissioners Richard W. Jackson, Tom Katsilometes, David R. Langhorst, and Ken A. Roberts; Michael Chakarun, Debbie Coulson, Valerie Dilley, Roxanne Lopez, Chuck Pond, Mark Poppler, Liz Rodosovich, Mike Teller, Randy Tilley, Bill von Tagen, Doreen Warren; Cynthia Adrian, Rick Anderson, McLean Russell, Don Williams; George Brown, Matthew Button, Mat Cundiff, Chelsea Kidney, Erick Shaner, Phil Skinner; Patty Hapke, Allan Pack, Tom Shaner, Steve Wynn.

Guests: Richard Budzich, Keith Bybee, Steve Olsen, Matthew Warnick.

Public Session.

Commissioner Tom Katsilometes convened the open meeting and welcomed all those in attendance.

Presentation of Certificates of Service.

Roxanne Lopez, Human Resources Officer, acknowledged the employees receiving a Certificate of Service, and stated how much their combined 95 years of state service were appreciated.

The Certificate of Service recipients were: Patty Hapke, Financial Technician (Management Services) for 25 years of state service and a thank-you letter from the Governor; and Alan Pack, Tax Policy Specialist (Tax Policy) for 30 years of state service and a thank-you letter from the Governor.

The absent recipients who will have their certificates presented at a later date are: Andrea Madsen, Tax Auditor 2 (Audit) for 5 years of state service; Kitty Smith, Tax Compliance Officer 2, Idaho Falls Field Office (Collections) for 10 years of state service; and Patricia Hatheway Gilmore, Tax Compliance Officer 2 in Lewiston Field Office (Collections) for 25 years of state service and a thank-you letter from the Governor.

The Commissioners each congratulated the recipients and said how the recipients' collected total of 95 years of dedicated state service was commendable and how the everyday work they do is appreciated.

Commissioner Katsilometes welcomed the guests and recognized Richard Budzich, the financial analyst assigned to the Tax Commission from the Division of Financial Management (DFM). Richard acknowledged his retirement and introduced his replacement, Matthew Warnick. The commission welcomed Matthew, and noted their sincere appreciation for Richard and offered him their best wishes.

Business Requiring Vote of the Commission.

Minutes: Open Meeting – June 4, 2014.

Chairman Jackson moved that the minutes of the open meetings held on June 4, 2014, be approved. Commissioner Roberts seconded. There were no comments or amendments. All voted in the affirmative, and the minutes of the open meeting on June 4, 2014, were approved.

Commissioner Katsilometes recessed the open meeting for 10 minutes to allow the Executive Leadership in attendance time to direct their respective business units during an interruption in production.

Commissioner Katsilometes reconvened the open meeting and continued with the Business Requiring Vote of the Commission.

Resolution 14-03 – Temporary Property Tax Rule 804T.

Alan Dornfest, Property Tax Manager, presents Resolution 14-03 – Temporary Property Tax Rule 804T and recommends the Commission adopt the temporary rule. This temporary property tax rule adds the state-authorized plant facility fund to the list of those funds excluded from computing the levy rate using the base assessment roll. Alan noted that it was prudent to have a temporary rule to avoid a problem in the Fall.

Commissioner Langhorst moved that Resolution 14-03 – Temporary Property Tax Rule 804T be adopted, and Chairman Jackson seconded. There were no comments or questions. All voted in the affirmative, and Resolution 14-03 was adopted.

Resolution 14-04 – Temporary Property Tax Rule 995T.

Alan Dornfest, Property Tax Manager, presents Resolution 14-04 – Temporary Property Tax Rule 995T and recommends the Commission adopt the temporary rule. This temporary property tax rule requires that the amount of the 2013 personal property tax exemption be included in the market value for assessment purpose for the computation of the amount of sales tax to be distributed to cities.

Commissioner Langhorst moved that 14-04 – Temporary Property Tax Rule 995 be adopted, and Chairman Jackson seconded. There were no comments or questions. All voted in the affirmative, and Resolution 14-04 was adopted.

There was no more business requiring a vote of the Commission.

Administrative Reports.

Legal, Chelsea Kidney.

Chelsea Kidney, Deputy Attorney General, presented a report on the Federation of Tax Administrators (FTA) Annual Meeting she attended in June. Chelsea noted how this was the best conference she has attended, very engaging and interesting. One highlight was a dialogue discussing the legal implications and complications from being a cost of performance state, like Idaho, while many other states are moving away from cost of performance towards market based sourcing.

Chelsea thanked the Commission for sending the Legal staff to the FTA Annual Meeting this year. Commissioner Langhorst noted there was good value from attending the FTA Annual Meeting and the Tax Commission was well represented.

Collections, Debbie Coulson.

Debbie Coulson, Collections Division Administrator, presented the administrative report for Collections. Debbie reported how much she appreciates what her staff has done this past year. They had approximately 14 staff members involved with the GenTax V9 upgrade (GEM Project), so other staff has had to step in and do the project team's work. Still the Collections staff managed to recover more dollars than the year before. Recoveries and closed collection cases: Recoveries: FY2014 – \$107,183,360.99, an increase of \$1,564,931.78 from FY2013 – \$105,618,429.21; Closed Cases: FY2014 – 94,455, a decrease of 5,660 from FY2013 – 100,115.

The innocent Spouse (Joint & Several Liability) bill (SB1301) is in full affect, and Collections will be working on promulgating rules to address some gray areas.

Debbie noted that her business unit has added a “Collection section” on the external website. It is under “Payment Options” and can be found in the upper right hand corner. Information can be found about payment options, forced collection actions, liens and levies, bankruptcy, and our newly implemented six-month payment plan with no lien. At this time, there are 927 taxpayers that have used the plan, amounting to \$797,784.33.

Management Services, Mark Poppler.

Mark Poppler, Financial Officer, presented the administrative report for Management Services (MS). Mark reported that there was a serious electrical problem in the IT computer room with electrical static energy, or a possible short, and is being investigated by our primary electrical contractor this morning. Yesterday the SAN and servers that host the GenTax V9 environments were forced to shut down and this morning the problem repeated and effected current GenTax V6 and most other network systems. Although the timing is curious with the new air conditioner unit just coming into service, it is not believed to be directly connected to this problem, but may be influencing the static electricity situation.

During the first weeks of the new fiscal year, one of the major changes is that the Collections Division finally has its own official budget. Another significant change is in the distribution formulas for cigarette tax revenues. The final numbers for the just ended fiscal year will be issued tomorrow.

This time of year also means that the next budget cycle is ready to begin and must be completed over the next 2 months. Ideas for major changes or enhancements should be discussed with peers and Commissioners now and brought forward to the ELT over the next several weeks. Those major enhancements already in the pipeline or discussion stage include the potential change in the GenTax maintenance model, replacement of the out-of-maintenance imaging machines, and a potential line item for funding a new fraud module in GenTax.

The Ketchum City Council, in their meeting on June 16, 2014, voted unanimously to end the collection MOU with the Tax Commission for administering their local option tax. Under different leadership, it had been officially approved only a year earlier, in May 2013. A working group headed up by Evan Reed of Revenue Operations (RO) is determining how to unwind the administrative agreement in the least disruptive manner for taxpayers and both entities, and continues to work closely with representatives from the City to discuss questions and identify any remaining issues that need to be resolved.

On Tuesday, Mike Teller, Jim Sereduk, and Mark fielded a conference call from a team from the Province of Saskatchewan investigating the possible implementation of GenTax to replace their 30-year old internal systems. Mike, Jim, and Mark answered questions regarding the Tax Commission’s experiences and satisfaction with GenTax and Fast Enterprises, how the procurement process worked, maintenance structure, etc.

Commissioner Katsilometes thanked Mark for all the additional information in his report. There were no questions.

There were no more administrative reports.

Reports on Rules Committees.

[Income Tax, Administration & Enforcement, Kilowatt, Mine License Rules](#) – Committee Chair, Cynthia Adrian.

Cynthia Adrian, Income Tax, Administration & Enforcement, Kilowatt, and Mine License Rules Committee Chair, reported negotiated and non-negotiated income tax rules the committee has before them. An open rules committee meeting was held on June 25, 2014.

Rule 016 – Idaho Gross Income is a negotiated new rule to provide guidance regarding the definition of Idaho gross income and how it is calculated. As of June 18, 2014, the PARF is approved, and the Notice of Intent will be published in the August Administrative Bulletin on August 6, 2014. Rule 075 – Tax on Individuals, Estates, and Trusts is a non-negotiated rule to update the tax brackets yearly. On June 10, 2014, the PARF was sent to DFM. Rule 171 – Idaho Capital Gains Deduction—Qualified Property is a negotiated rule. An individual has approached the Tax Commission requesting examples be added regarding the holding period requirements. The specifics are to be determined during negotiated rulemaking. On June 18, 2014, the PARF was approved & the Notice of Intent will be published in the August Administrative Bulletin.

Rule 190 – Idaho Medical Savings Account is a non-negotiated rule updated to conform to 2014 HB595a. The rule is updated to increase the maximum amount deductible to \$10,000 single/\$20,000 MFJ. On June 17, 2014, the PARF was sent to DFM. Rule 263 – Idaho Source Income of Nonresident and Part-Year Resident Individuals—Distributive Share of S Corporation and Partnership Income is a non-negotiated rule. This rule updates amount of guaranteed payments that is sourced as compensation for services per §63-3026A(3)(a)(i)(2), to include the amount for 2014. On June 17, 2014, the PARF was sent to DFM. Rule 268 – Idaho Source Income of Nonresident and Part-Year Resident Individuals—Suspended Losses from Pass-Through Entities is a new negotiated rule to provide guidance regarding sourcing of suspended losses of nonresidents. On June 18, 2014, the PARF was approved, and the Notice of Intent will be published in the August Administrative Bulletin.

Rule 275 – Idaho Source Income of Nonresident and Part-Year Resident Individuals—Investment Income from Qualified Investment Partnerships is a negotiated rule to provide an example showing non-Idaho real property. The PARF was approved on June 18, 2014, and the Notice of Intent will be published in the August Administrative Bulletin. Rule 291 – Tax Paid by Pass-Through Entities for Owners or Beneficiaries—Computation of Idaho Taxable Income for Taxable Years Beginning on or After January 1, 2012 is a negotiated rule to provide a list of items allowed as a deduction to owners of an interest in a pass-through entity. The specifics will be determined during negotiated rulemaking. The PARF was sent to DFM on June 17, 2014.

Rule 560 – Special Rules is a negotiated rule to remove language about “unusual fact situations that ordinarily are unique and nonrecurring” amended consistent with language from MTC. The PARF was approved on May 21, 2014, and a Notice of Intent was published in the June bulletin. Rule 750 – Broadband Equipment Investment Credit: In General is a negotiated rule to provide additional guidance on how the mechanics of the broadband tax credit work with regard to the carryover period. The modified rule will give guidance regarding the 14-year carryover period and provide an example. The PARF was approved on May 21, 2014, and a Notice of Intent was published in the June bulletin.

Rule 771 – Grocery Credit: Taxable Years Beginning After December 31, 2007 is a non-negotiated rule to update the grocery credit yearly. The PARF was sent to DFM on June 17, 2014. Rule 872 – Reporting and Paying State Income Tax Withholding is a non-negotiated rule amended to change the language from split monthly to semimonthly. The PARF was sent to DFM on June 17, 2014.

Two Administrative and Enforcement Rules are both non-negotiated rules with the PARFs sent to DFM on June 17, 2014. Rule 310 – Interest Rates will update the interest rate yearly. Rule 501 – Procedures on Settlements Over Fifty Thousand Dollars is an update to reflect current division changes in the agency. This rule updates the language and does not change the procedures for settlements.

There were no questions.

Motor and Special Fuels Tax Rules – Committee Chair, Don Williams.

Don Williams, the Motor and Special Fuels Tax Rules Committee Chair, reported that the rules committee has six rules this year. Three rules are technical corrections required by the Department of Administration, Rule 001 – Title and Scope, Rule 004 – Incorporation by Reference, and Rule 006 – Public Records. The PARFs for these three rules were approved by DFM on April 23, 2014 and a Notice of Proposed Rulemaking was published in the June 4, 2014, Administrative Bulletin. The committee will propose a resolution next.

Rule 003 – Administrative Appeal includes the Commission appeal process for non-NOD decisions. Rule 003 was tabled indefinitely in favor of presenting a legislative change.

At the rules committee meeting on June 4, 2014, Rule 110 – Calculation of Tax on Gaseous Fuels and Rule 311 – IFTA License Bonding was discussed. Rule 110 – Calculation of Tax on Gaseous Fuels states the tax basis for a gaseous fuel is the energy equivalent of a gallon of gasoline. The amended rule will add a definition for a gaseous fuel. The amended rule will also adopt the gas gallon equivalent for compressed natural gas and the diesel gallon equivalent for liquefied natural gas. Rule 311 – IFTA License Bonding is a new rule based on the authority of Section 63-2442A and the IFTA Articles of Agreement, the rule would implement IFTA license bonding for late filing and revoked IFTA licensees. It would also allow the licensee to request a bond waiver. The PARFs for Rule 110 and Rule 311 were both approved by DFM on April 23, 2014 and a Notice of Intent was published in the June 4, 2014, Administrative Bulletin. There was a negotiated rule meeting for both rules on June 14, 2014, and the committee submitted a Notice of Proposed Rulemaking for August bulletin.

There were no questions.

Sales & Use Tax Administrative Rules – Committee Chair, McLean Russell.

McLean Russell, Sales & Use Tax Administrative Rules Committee Chair, reported on the sales and use tax rules they have this year. The next rules committee meeting is on July 17, 2014. McLean reviewed the rules before the committee this year.

Rule 010 – Definitions is expected to be a non-negotiated rule.. In subsection 04 defining “contractor improving real property,” replace the out-of-date terms “speculation contractor, spec contractor” with the more modern term “speculative builder.” This proposed rule will be published in the October Administrative Bulletin. Rule 012 – Contractors Improving Real Property is a negotiated rule with the Notice of Intent published in the July Bulletin. Two issues need to be addressed. First, the language in subsection 13 regarding the exemption for materials incorporated into real property in a state that does not impose a use tax on those materials (Idaho Code Section 63-3622B in statute) needs to state more explicitly what is covered by the exemption and what is not. Second, there has been an increase in projects in which the general contractor hires a subcontractor to fabricate and install materials into real property but ultimately the general does the installation work itself (usually through a second contract between the sub and the general). The language in subsections 08-10 needs to be updated to address this scenario and the resulting tax consequences. Draft 1 will be discussed in the July 17, 2014, meeting.

Rule 022 – Drop Shipments is a negotiated rule with the Notice of Intent published in June Bulletin. The purpose of amending the rule is to clarify the responsibilities of both in-state and out-of-state retailers, manufacturers, and customers, in a drop shipment situation. Draft 2 will be discussed in the July 17, 2014, rules committee meeting. Rule 024 – Rentals or Leases of Tangible Personal Property will have Draft 1 discussed in the July 17, 2014, meeting. The subsection 012 will be reviewed to see how the descriptions can be cleaned up to achieve the original goal of only one lease type applying to a particular lease contract.

Rule 027 – Computer Equipment, Software, & Data Services will have Draft 2 discussed in the July 24, 2014, rules committee meeting. Address changes arising from the passage of House

Bill 598 during the 2014 legislative session. HB 598 exempted software delivered through any method other than tangible storage media transferred to the user. The only exception is for digital videos, music, books, and games, which remain taxable regardless of delivery method. Some of the key issues include the taxability of digital subscriptions, the definition of a digital book, and the various charges associated with digital games. Rule 049 – Warranties and Service Agreements will have Draft 2 discussed at the July 17, 2014, meeting. There has been confusion expressed by taxpayers on how to tax certain aspects of extended service agreements. Of particular concern are agreements in which consumables are provided on a routine basis (i.e. toner cartridge for a leased copier) and overage charges when the customer exceeds a certain amount of usage of the property in question.

Rule 063 – Bad Debts and Repossessions, will simplify the complicated calculations where possible and a proposal from a business owner submitted to simplify the calculation for sales tax refunds related to bad debt. This was discussed in the June 19 meeting and will be discussed further in a sub-committee meeting. Rule 100 – Prescriptions addresses confusion and concerns raised by optometrists and eyeglass/contact sellers related to the taxability of various services when tied to a taxable sale of eyeglasses or contacts. Draft 2 will be discussed in the July 17, 2014, rules committee meeting. Rule 102 – Logging will have Draft 1 discussed in the July 17, 2014, meeting. The rule needs to be amended to make it clear that materials and equipment used on a tree farm for a purpose other than harvesting can qualify under the production exemption (if the criteria of that exemption are met) but not the logging exemption.

Rule 105 – Time And Imposition Of Tax, Returns, Payments And Partial Payments is a proposed non-negotiated rule which clarifies that payments for multiple tax types and returns can now be combined into a single payment. This proposed rule will be published in the October Administrative Bulletin. Rule 107 – Vehicles And Vessels -- Gifts, Military Personnel, Nonresident, New Resident, Tax Paid To Another State, Sales To Family Members, Sales To American Indians, And Other Exemptions is a proposed non-negotiated rule to be published in the October Bulletin. This proposed rule will clean up the language addressing the use tax exemption for new residents and military personnel temporarily assigned to Idaho when they bring property with them when they move to Idaho. Rule 128 – Certificates for Resale and Other Exemption Claims is a negotiated rule with the Notice of Intent published in the July Bulletin. This proposed rule change will require the use of the Form ST-104-HM, Sales Tax Exemption on Lodging Accommodations; or Form ST-104G Sales Tax Exemption Claim for Cash Purchases by the Government for exempt sales of lodging accommodations. Draft 1 will be discussed at the July 17, 2014, meeting. Randy noted that the forms could be a huge burden on industry.

Commissioner Katsilometes noted appreciation for McLean Russell's efforts since the sales tax rules are a complicated a property tax. Mike Chakarun added that the rules chairs are trying to have the process year round so they can work on the complicated issues.

There were no questions.

Property Tax Rules – Committee Chair, Alan Dornfest.

Alan Dornfest, Property Tax Rules Committee Chair, presented the Property Tax Rules Committee report. Alan noted that there was a Property Tax Rules Committee meeting on June 24, 2014, which completed actions on all the rules but three and a new proposed rule to conform to statutory change.

Alan highlighted Rule 609 – Homeowners Exemption provides for optional removal if by April 15, 2014, the home is no longer owned by the applicant. The Draft was circulated to assessors and the anticipated controversy did not happen. Alan mentioned a new proposed rule on the oil and gas industry gathering lines to other lines and pumps. A draft was sent to industry and interested assessors. This new proposed rule will be negotiated and published in the August Administrative Bulletin.

There were no more questions.

There were no other rules committee reports.

Other Business.

Bill von Tagen, Deputy Attorney General, presented This Day in History.

This Day in History, July 9:

1540 – England’s King Henry VIII 6-month marriage to Anne of Cleves annulled.

1878 – An improved corn cob pipe patented by Henry Tibbe, Washington, MO

1910 – Walter Brookins becomes 1st to pilot an airplane to 1-mile altitude.

1932 – Washington Redskins (then Boston Braves) formed

1956 – Dick Clark’s 1st appearance as host of American Bandstand

1958 – Giant splash caused by fall of 90 million tons of rock & ice into Lituya Bay, Alaska washed 1,800 feet up the mountain.

#1 Songs

1955 – Bill Haley & Comets “Rock Around the Clock” tops billboards chart

This Month in History, July:

1898 – July 1 – Teddy Roosevelt and his Rough Riders charge up San Juan Hill

1971 – July 15 – President Nixon announces he would visit People’s Republic of China

1937 – July 22 – Senate rejects FDR proposal to enlarge Supreme Court

1588 – July 29 – Attacking Spanish Armada defeated and scattered by English defenders

1928 – July 29 – Walt Disney’s “Steamboat Willie” is released

There was no other business.

Public Comments.

There were no public comments.

Recess.

Commissioner Katsilometes recessed the Public Session for five minutes to reconvene for the commissioners to meet with the Commission’s legal counsel.

Reconvene Meeting.

Commissioner Katsilometes reconvened the open meeting.

Executive Session.

Commissioner Langhorst moved to go into the Executive Session with its legal counsel pursuant to Idaho Code § 67-2345(1)(f) to discuss the current status of litigation to which the Commission is a party. A roll call vote was given by Valerie Dilley, Executive Administrative

Assistant. Commissioners Jackson, Katsilometes, Langhorst, and Roberts all voted in favor and the motion passed.

The Commission met in executive session with its legal counsel pursuant to Idaho Code § 67-2345(1)(f) to discuss the current status of litigation to which the Commission is a party. No matters requiring a vote of the Commission resulted from the executive session.

Public Session.

Commissioner Katsilometes declared the Executive Session ended and returned to the public session.

There being no further business, the meeting adjourned.

Valerie J. Dilley
Secretary

Tom Katsilometes
Chair